

THE CHINESE HERBALIST AND THE MEDICAL PRACTICE ACT

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As far back as runneth the mind of man has the Chinese "herb doctor" been a problem in California. We do not believe that there is a remote possibility of passing any legislation that either will effectively stop these Chinese herbalists from operating or put an end to their advertising, unless there be an unbelievable change of attitude in public opinion, an awakening of the lower courts and enforcement officers in many localities to a keener sense of civic responsibility in law administration, and more manifest co-operation evidenced by a change of policy on the part of some of our papers as to the type of advertising accepted for publication.

WE HAVE read with growing interest the article on page 330 of the March issue of CALIFORNIA AND WESTERN MEDICINE, where, in commenting on the Chinese herbalist situation in California, the Board of Medical Examiners is invited to supply some facts which may explain why the Chinese herbalists are permitted to advertise as they do in the daily papers. It is self-evident that the question should be directed to the advertising manager of each paper, for through him all advertising contracts are executed. A newspaper will not print any advertisement unless a contract had been signed and the "copy" had been submitted to the advertising department for publication.

As an example of the difficulties encountered in attempting to stop illegal advertising on the part of Chinese herbalists, we will relate a recent instance. Not long since the attention of the Board of Medical Examiners was called to such advertisements as "Dr. Chow," "Dr. Woo," "Dr. Lau Yit Cho," etc., and we thereupon undertook to exact compliance with the law by charging a specific herbalist with illegal use of the prefix "Dr." At the preliminary trial a charge of using the prefix "Dr." cannot be sustained unless the *advertising solicitor* will identify the defendant Chinese as the one who signed the advertising contract, frequently an impossibility, as the Chinese attendants (both translator and doctor) in the herbalist's office change frequently, or at least they change their names. Seldom will an herbalist give the same name when arrested on a second charge of violation of the law. Without identification of the defendant Chinese as the one who signed the advertising contract, the prosecution collapses.

An advertisement of a Chinese herbalist recently appeared in at least one of the San Francisco papers, reading: "If you are sick, come to us and have us give you a *scientific diagnosis* that will tell you absolutely the true condition of your whole system." This advertisement contradicts the usual court defense of the Chinese herbalists who, when charged with violation of the Medical Act, testifies that he did not "diagnose" but acted in the capacity of a storekeeper selling rice, tea, and sometimes herbs. At the preliminary hearing of the Chinese herbalist, whose "firm" used the above advertisement, the investigator for the Board of Medical Examiners, who, by the way, fully understands Chinese, testified that he understood the conversation carried on between the interpreter and the Chinese (doctor) herbalist,

who asked what pain the patient had, whether heart, back, or stomach, that the interpreter asked a fee of \$12, was paid \$5, and when asked for a receipt, gave the witness a small piece of card with a number on it, telling him to return. On the second visit the Chinese (doctor) herbalist placed the patient's hands on a pillow, felt the pulse, and said "She got a bad cold."

The advertisement mentioning the "scientific diagnosis" quoted above *was not admitted in evidence at the trial because the advertising solicitor testified he could not identify the defendant Chinese as the individual who gave him the advertisement.* This case is now under consideration by a police court magistrate as to whether the evidence submitted is sufficient to hold the defendant Chinese for trial.

The Better Business Bureau, which stands for honesty in advertising, should interest themselves in advertising of this nature, particularly when the statement is made that a "scientific diagnosis" will be given. Our investigators report that the "scientific diagnosis" made by the average Chinese herbalist consists in feeling the patient's pulse, looking at his tongue, and asking some questions as to his condition. It is then customary to brew some concoction for the patient to drink, some often given him to take away, and he is told that treatment will cost \$10 to \$12 per week, payable in advance.

CALIFORNIA AND WESTERN MEDICINE, May, 1925, page 617, in an editorial, "What About These Law Violators," quotes the above-mentioned advertisement, reading: "Come and have us give you a scientific diagnosis that will tell you absolutely the true condition of your whole system" (Chan & Kwong—Chan & Chan), with the comment, "If this isn't flagrant disregard for law, what is it? Why are these law violators not punished?" As a result of the activities of the Board of Medical Examiners this illegal advertising was recently corrected. The records of the Board of Medical Examiners show we have been most active in presenting to the courts throughout this state what we consider as irrefutable evidence of violation of the Medical Act on the part of many Chinese herbalists.

A certain Oakland Chinese herbalist, referred to as "Dr." in his newspaper advertising, when recently brought to trial on a charge of violating the Medical Practice Act, *displayed letters patent from Washington, showing he has been issued a patent on his name, thereby claiming legal authority to use the prefix "Dr."* despite the prohibition of such prefix by the California law. Legally this had no bearing on the case and properly should not have been permitted presentation in court.

The system under which preliminary hearings are held differs in various localities. The city charters of Oakland and Los Angeles permit a trial *by jury* in the police court, whereas in the majority of California cities and towns the preliminary hearing of one charged with law violation is held either before a justice of the peace (if the community be small) or before a police judge in the larger cities, such as San Francisco. After the evidence has been submitted the judge takes the matter under advisement, dismisses or holds the defendant for trial.

Considerable time invariably elapses between the

filing of the complaint and the first or "preliminary" hearing of the charges before the justice of the peace or police judge. This delay is often due to the congested condition of the court calendar; however, not infrequently the hearing is put over time and again at the request of the attorney for the defendant, who hopes as a result of long delay that the witnesses for the prosecution will have disappeared. In the instance of a trial (not an herbalist) recently completed in the Oakland Police Court, our Investigation Department reported that practically two and one-half years had elapsed between the time of arrest and the time of trial of said violator. During this period of delay seventeen postponements were reported. After the defendant has been held for trial in the Superior Court, again ensues a more or less extended delay, frequently occasioned by the attorneys for the defendant. The longer the trial is delayed the greater are the possibilities that witnesses for the prosecution will have disappeared.

The records show a surprising number of dismissals in the lower courts. Reference to the 1921 annual report of the Board of Medical Examiners (page 35) shows that during that year fifty-four Chinese herbalists were charged with violation of the Medical Practice Act in Northern California and twenty were dismissed (about 38 per cent); while of fourteen arrested in Southern California, only one was dismissed.

The legal report of the board is printed in each issue of the directory, which makes possible a complete check on all phases of our enforcement work.

An article, "The Problems of Enforcement," page 13 of the 1920 annual report of the Board of Medical Examiners, reprinted on page 231 of the 1921 directory, explains some of our difficulties.

Assembly Bill 440, introduced by Mr. Ed. Smith, which occasioned so much comment during the 1925 legislative session, had possibilities in effecting some modification of existing conditions and it has been suggested that a satisfactory conference bill might have been drawn, but we can foresee no legislation that will "close up" the Chinese herbalist.

Perchance a few Chinese herbalist cases reported by our Legal and Investigation Department may prove of interest.

A certain Chinese herbalist not far from San Francisco was reported by our former special agent to have passed him "protection money" in plain sight of a police officer, who promptly arrested the Chinese. The case was dismissed, *the judge holding that inasmuch as said investigator was not a sworn officer of the law, the giving of money for protection did not constitute bribery, nor was it an offense.* The law was thereafter amended so that special agents of the board are now sworn officers of the law.

A Chinese herbalist who gained considerable notoriety during the past legislative session was arrested January 5, 1925, in a neighboring city. The case was continued until May 8, 1925, when the case was put over to September 15, 1925. Commenting on the situation, our special agent on May 9, 1925, reported that list of witnesses was sub-

mitted to the district attorney on February 28, 1925, and return made May 7 (the day before trial) showed only one of the four witnesses could be found; that this information was conveyed to the representative of the board "twenty minutes before the case was called . . . the jury had been summoned . . . although the witnesses were not obtainable. . . ."

Some time ago our investigator reported the arrest of a Chinese herbalist in a northern county. A search of his premises netted abortion instruments, admittedly his, and he confessed practicing medicine. Conviction.

A certain well-known Chinese herbalist in a Northern California city, prominently involved in the recent legislative controversy, had at his office door for many years an ornate brass sign reading, "Physician and Surgeon—Eye, Ear, Nose and Throat," until after many attempts he was finally convicted by the legal department of the Board of Medical Examiners. This conviction was sustained by the higher courts, and he then paid a fine of \$500 and spent four months in the county jail.

It is reported that this wily Celestial for years has retained each new district attorney as his *personal* attorney. Newspaper reports relate he "has been fined heavily in the federal courts and justice court for selling drugs illegally." He has also been charged with performing illegal operations. Prosecution of this individual has been surrounded by unbelievable difficulties.

If space permitted we could relate many other instances to show that the Chinese herbalist is not the asserted innocent storekeeper selling only tea, rice, and occasionally some herbs.

An illuminating article narrating the operation of the Chinese herbalist was published in the *Dear-born Independent* of August 9, 1924. Therein is stated that the Chinese medical system was founded in 1578 and has not been changed since. "For 346 years Chinese 'doctors' in China and abroad have followed this book (Pen T'Sao) without changing their drugs, their compounds of those drugs, or their methods of medication."

"Diseases in China," by Jeffereys and Maxwell, relates "To become a physician a Chinese states to his friends and neighbors 'I am a physician.' This is the limit of required preparation. The Chinese doctor's diploma is a more or less handsome sign-board, which announces his determination to the neighborhood."

The *China Medical Journal* 38:679, August, 1924, recites that Chinese physicians are mostly purveyors of superstition, excepting a small group of those trained abroad or at home in modern medical science. Ancient customs embrace or condemn views quite opposite to Occidental standards. Most native Chinese physicians rely on few remedies which may be of value, but the composition is a closely guarded secret.